

## 1

2

1

3

1

11

S

6

7

8

9

0

1

2

3

4

5

6

7

8

9

20

1

22

23

24

25

36

1 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
2 Administrative Hearings.

3 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
4 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable  
5 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence  
6 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative  
7 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-  
8 1092.07(B), any person may appear on his or her own behalf or by counsel.

9 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
10 made by a court reporter or by electronic means. Any party that requests a transcript of the  
11 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

12 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
13 Attorney General Erin O. Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona  
14 85007.

#### 15 NOTICE OF APPLICABLE RULES

16 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")  
17 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting  
18 forth the rules of practice and procedure applicable in contested cases and appealable agency actions  
19 before the Superintendent. The Hearing will be conducted pursuant to these rules and the rules  
20 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through R2-  
21 19-122. A copy of these rules is enclosed.

22 Pursuant to A.A.C. R20-4-1209, Petitioner shall file a written answer **within twenty (20)**  
23 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioner's position  
24 or defense and shall specifically admit or deny each of the assertions contained in this Notice of  
25 Hearing. If the answering Petitioner is without or is unable to reasonably obtain knowledge or  
26 information sufficient to form a belief as to the truth of an assertion, Petitioner shall so state, which

1 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioner  
2 intends to deny only a part or qualification of an assertion, or to qualify an assertion, Petitioner shall  
3 expressly admit so much of it as is true and shall deny the remainder. Any defense not raised in the  
4 answer is deemed waived.

5 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioner will be**  
6 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as  
7 true and admitted and the Superintendent may take whatever action is appropriate, including issuing  
8 an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating  
9 mortgage brokers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131, and imposing a civil money  
10 penalty pursuant to A.R.S. § 6-132.

11 Petitioner's answer shall be mailed or delivered to the Arizona Department of Financial  
12 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
13 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
14 Arizona 85007 and to Assistant Attorney General Erin O. Gallagher, Consumer Protection &  
15 Advocacy Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

16 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
17 **alternative format or assistance with physical accessibility.** Requests for accommodations must  
18 be made as early as possible to allow time to arrange the accommodations. If accommodations are  
19 required, call the Office of Administrative Hearings at (602) 542-9826.

## 20 COMPLAINT

21 1. Petitioner Amwest Capital Mortgage, Inc. ("Amwest") is a California corporation  
22 authorized to transact business in Arizona as a mortgage broker, License Number MB-0910277  
23 within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of Amwest's business is that of making,  
24 negotiating, or offering to make or negotiate loans secured by Arizona real property within the  
25 meaning of A.R.S. § 6-901(11).

26 2. Glenn F. Hinton ("Mr. Hinton") is the President of Amwest.

1           3. Amwest is not exempt from licensure as a mortgage broker within the meaning of  
2 A.R.S. § 6-902.

3           4. On or about December 29, 2009, D. Hinton submitted Amwest's Mortgage Broker  
4 License Renewal Application ("Renewal Application") via the Nationwide Mortgage Licensing  
5 System. D. Hinton attested in the Renewal Application he was "duly appointed and authorized" by  
6 Amwest and swore that all information contained in Amwest's online record is "true, accurate and  
7 complete in accordance with the appropriate jurisdiction's law."

8           5. In the Disclosure Questions section of Amwest's online record, D. Hinton answered  
9 "no" to each of the following inquiries on October 29, 2009: "In the past 10 years, has any State or  
10 federal regulatory agency or foreign financial regulatory authority: (1) found the entity or a control  
11 affiliate to have made a false statement or omission or been dishonest, unfair or unethical?; (2) found  
12 the entity or a control affiliate to have been involved in a violation of a financial services-related  
13 regulation(s) or statute(s)?; (3) found the entity or a control affiliate to have been a cause of a  
14 financial services-related business having its authorization to do business denied, suspended,  
15 revoked or restricted?; (5) denied, suspended, or revoked the entity's or a control affiliate's  
16 registration or license or otherwise, by order, prevented it from associating with a financial services-  
17 related business or restricted its activities?"

18           6. On October 5, 2009, the Department received certified documents from the Idaho  
19 Department of Finance ("IDF") regarding *State of Idaho, Department of Finance, Consumer*  
20 *Finance Bureau v. Amwest Capital Mortgage, Inc.*, Docket No. 2008-8-09, Order Denying  
21 Application for A Mortgage Broker/Lender License and Notice of the Opportunity For A Hearing  
22 ("Order"). This Order was executed by the Director of the IDF.

23           7. According to the Order, D. Hinton, on behalf of Amwest, accepted a Uniform  
24 Residential Loan Application from an Idaho resident. Amwest submitted this loan application to  
25 Guild Mortgage along with a document purporting to be an Idaho "Mortgage Lender License" which  
26 had allegedly been issued to Amwest by the IDF. However, this particular document was on a form

1 that had not been used by the IDF for over four years. Subsequently, Guild Mortgage contacted the  
2 IDF and learned that Amwest had not been issued a mortgage broker/lender license.

3 8. The IDF's December 19, 2008 Order concluded, "The Director finds that Respondent's  
4 submission of a fictitious mortgage lender license to Guild Mortgage on July 27, 2008, demonstrates  
5 that Respondent lacks the character and fitness necessary to warrant the belief that Respondent will  
6 engage in the mortgage brokering/lending business honestly and fairly, within the purposes of the  
7 Act...Further, the Director finds that Respondent's acceptance of a residential mortgage loan when  
8 Respondent did not hold a mortgage broker/lender license issued by the [IDF] constitutes a violation  
9 of the Act and establishes a separate basis for denial of Respondent's application..."

10 9. At no time did Amwest update its online record Disclosure Questions section to reflect  
11 the issuance of IDF's July 27, 2008 Order.

12 10. Based upon, but not limited to the foregoing, on February 17, 2010, the Department  
13 denied Amwest's Renewal Application pursuant to A.R.S. § 6-905(A)(7).

14 11. The Department's denial of Amwest's Renewal Application is an appealable agency  
15 action as defined by A.R.S. § 41-1092(3).

16 12. On March 16, 2010, the Department received a request for hearing from Amwest to  
17 appeal the Department's denial of its Renewal Application.

18 13. Additionally, on March 10, 2010, according to the Public Access System of the Arizona  
19 Corporation Commission ("ACC"), the ACC issued a Certificate of Revocation which revoked  
20 Amwest's authority to transact business/conduct affairs as a foreign corporation in the state of  
21 Arizona. The revocation was due to an "undeliverable domestic address."

## 22 **GROUND FOR DENIAL**

23 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to  
24 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,  
25 rules, and regulations relating to mortgage brokers.

26 2. Pursuant to A.R.S. § 6-903(B), the Superintendent shall not grant a mortgage broker's

1 license...to a person, other than a natural person, who is not registered to do business in this state on  
2 the date of granting the license.

3 3. Pursuant to A.R.S. § 6-905(A)(2), the Superintendent may deny a license to a person or  
4 suspend or revoke a license if the Superintendent finds the applicant or licensee has shown that it is  
5 not a person of honesty, truthfulness and good character.

6 4. Pursuant to A.R.S. § 6-905(A)(7), the Superintendent may deny a license to a person or  
7 suspend or revoke a license if the Superintendent finds that an applicant or licensee has had an order  
8 entered against him involving fraud, deceit or misrepresentation by an administrative agency in this  
9 state, the federal government or any other state or territory of the United States and that the facts  
10 relating to the order indicate that it would be contrary to the interest of the public to permit such  
11 person to be licensed or to control or manage a licensee.

12 5. Pursuant to A.R.S. § 6-905(A)(8), the Superintendent may deny a license to a person or  
13 suspend or revoke a license if the Superintendent finds that the applicant or licensee has made a  
14 material misstatement or suppressed or withheld information on the application for a license.

15 6. Grounds exist for the denial of Amwest's Renewal Application pursuant to A.R.S. § 6-  
16 905(A)(7) and (A)(8), as Amwest has had an administrative order issued against it by the Idaho  
17 Department of Finance based on its acceptance of a Uniform Residential Loan Application for an  
18 Idaho resident prior to applying for licensure in Idaho, and subsequently providing Guild Mortgage  
19 with a fabricated document purporting to be Amwest's Idaho "Mortgage Lender License," as well as  
20 the fact that Amwest misrepresented to the Department on its renewal application that no  
21 administrative orders had been issued against it.

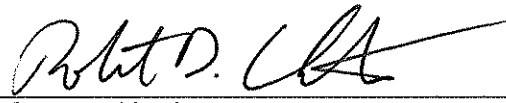
22 7. Grounds exist for the denial of Amwest's Renewal Application pursuant to A.R.S. § 6-  
23 903(B), as Amwest is not registered with the ACC to do business in the state of Arizona.

24 8. Grounds exist for the denial of Amwest's Renewal Application pursuant to A.R.S. § 6-  
25 905(A)(2), as Amwest's actions in misrepresenting itself to both the Department and IDF show it is  
26 not a person of honesty, truthfulness and good character.

1           WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the  
2 above-described violations, the Superintendent may affirm the denial of Amwest's Mortgage Broker  
3 License Renewal Application, pursuant to A.R.S. § 6-903(B) and A.R.S. § 6-905(A)(2), (A)(7) and  
4 (A)(8).

5           DATED this 11<sup>th</sup> day of May, 2010.

6                           Lauren W. Kingry  
7                           Superintendent of Financial Institutions

8                           By   
9                           Robert D. Charlton  
10                          Assistant Superintendent of Financial Institutions

11  
12 ORIGINAL of the foregoing filed this 11th  
13 day of May, 2010, in the office of:

14           Lauren W. Kingry  
15           Superintendent of Financial Institutions  
16           Arizona Department of Financial Institutions  
17           ATTN: Susan Longo  
18           2910 N. 44th Street, Suite 310  
19           Phoenix, AZ 85018

20 COPY mailed/delivered same date to:

21           Lewis Kowal, Administrative Law Judge  
22           Office of the Administrative Hearings  
23           1400 West Washington, Suite 101  
24           Phoenix, AZ 85007

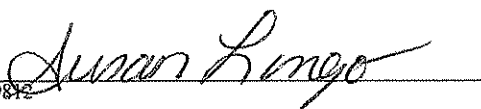
25           Erin O. Gallagher  
26           Assistant Attorney General  
27           Office of the Attorney General  
28           1275 West Washington  
29           Phoenix, AZ 85007

30           Robert D. Charlton, Assistant Superintendent  
31           Richard Fergus, Licensing Division Manager  
32           Arizona Department of Financial Institutions  
33           2910 N. 44th Street, Suite 310  
34           Phoenix, AZ 85018

1 AND COPY MAILED SAME DATE by  
2 Certified Mail, Return Receipt Requested, to:

3 Amwest Capital Mortgage, Inc.  
4 Attn: Glenn F. Hinton, President  
5 465 E. Grand Ave.  
6 Escondido, CA 92025  
7 Petitioner

8 Corliss Ford, Statutory Agent for:  
9 Amwest Capital Mortgage, Inc.  
10 4909 E. McDowell Rd, #120  
11 Phoenix, AZ 85008

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
  
789842